

STATE OF MICHIGAN
COURT OF APPEALS

In re IRELAND, Minor.

UNPUBLISHED
December 15, 2015

No. 326557
Livingston Circuit Court
Family Division
LC No. 13-014612-NA

Before: SHAPIRO, P.J., and O'CONNELL and WILDER, JJ.

PER CURIAM.

Respondent mother appeals as of right the trial court's order terminating her parental rights to her daughter under MCL 712A.19b(3)(c)(i), (g), and (j). We affirm.

I. BASIC FACTS AND PROCEDURAL HISTORY

Respondent gave birth to her daughter in December 2011. She had struggled for three or four years with an addiction to prescription pain medication stemming from a work-related back injury that progressed into a heroin addiction. She sought detoxification treatments but was unsuccessful in achieving long-term sobriety. When respondent became pregnant, she attended a program at the University of Michigan for high-risk expectant mothers and continued to receive help from that program until one year after the child's birth. The child was not developing normally, and after respondent sought medical attention, the child was diagnosed with cerebral palsy. And the child also developed respiratory problems and a seizure disorder. Respondent testified that she sought treatment for depression and relapsed with heroin in March 2013 while she was on probation for crimes committed before the child's birth. As a result, respondent entered a substance abuse program offered by Community Programs, Inc (CPI). She testified that she left that program when the child was hospitalized for respiratory problems. Respondent did not return when the child was discharged from the hospital. Respondent was pulled over and arrested in July 2013 and served a couple of months in jail. The child's health issues continued to be challenging, and respondent was also dealing with a strained relationship with Charles Gilmore, her boyfriend, with whom she lived and who took an active role in raising the child, including providing care while respondent was in jail.

The Department of Health and Human Services (DHHS) became involved after respondent overdosed on heroin in October 2013. Respondent testified that on this occasion, she drove with her child to the east side of Detroit to purchase the drugs and took the drugs while she was alone at home with her child. Gilmore found respondent gasping for air and called 911. On November 13, 2013, a petition was filed that outlined both respondent's and Gilmore's criminal

history, respondent's drug use, and an incident of Gilmore's domestic violence against respondent. Respondent admitted to the petition's allegations, and she and her child entered a domestic violence shelter. Respondent missed and failed drugs screens, and the child was removed from her custody and placed in foster care.

Thereafter, respondent became evasive with her caseworkers, did not follow her service plan—specifically with respect to services aimed at substance abuse—did not fully exercise parenting time, and failed to remain employed with adequate housing. Respondent lived with a man who sold heroin and during this time she faced additional criminal charges for delivery of a controlled substance. Respondent opted for a sentence that included six months in jail and her release to the CPI program. Respondent remained incarcerated or obligated to remain in the CPI program from April 2014 to December 2014.

These proceedings had continued despite respondent's lack of participation and communication with her caseworker. Even her attorney reported that her communications with him were not always consistent. In May 2014, petitioner requested that the goal be changed from reunification to termination and adoption, as one of the foster families expressed an interest and ability to adopt. A supplemental petition seeking termination was filed in June 2014. On the eve of the termination trial, the trial court granted respondent's request to adjourn the trial so that respondent's progress could be assessed at a November 2014 review hearing. At that hearing, the parties agreed to a trial date, and respondent requested parenting time based on her progress. The Juvenile Referee expressed confusion about the appropriateness of allowing parenting time when the goal was no longer reunification and declined respondent's request.

The termination trial was held in February 2014, and the central issue was respondent's ability to care for a child with extensive special needs given respondent's history of substance abuse. The trial court concluded that clear and convincing evidence established grounds to terminate respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). The trial court reasoned that respondent had a long history of relapsing, had admitted to substance abuse after her October 2013 overdose, and had not complied with services or maintained a sufficient period of sobriety during these proceedings. The trial court explained that respondent's employment and housing was insufficient to care for herself or her special-needs child. The trial court concluded that the child would be at risk of harm if returned to respondent's care because respondent had failed to establish adequate mental health stability and sobriety. The trial court also concluded that terminating respondent's parental rights was in the child's best interests. The trial court reasoned that the child required intensive care for her medical conditions, and she was doing well in foster care. The trial court further explained that it is not in a child's best interests to spend years in foster care waiting for her parent to become rehabilitated.

II. ANALYSIS

Respondent argues that the trial court erred in concluding that there was sufficient evidence supporting a statutory ground to terminate her parental rights and that termination was in the child's best interests. “ ‘We review for clear error both the court's decision that a ground for termination has been proven by clear and convincing evidence and, where appropriate, the court's decision regarding the child's best interest' under MCL 712A.19b(5).” *In re Olive/Metts Minors*, 297 Mich App 35, 40-41; 823 NW2d 144 (2012), quoting *In re Trejo, Minors*, 462 Mich

341, 356-357; 612 NW2d 407 (2000). “A finding is clearly erroneous when, although there is evidence to support it, the reviewing court on the entire record is left with a definite and firm conviction that a mistake has been committed.” *In re Campbell*, 170 Mich App 243, 253-254; 428 NW2d 347 (1988). “To be clearly erroneous, a decision must be more than maybe or probably wrong.” *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011) (citation omitted). Moreover, “regard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989); MCR 2.613(C).

Grounds for terminating parental rights under MCL 712A.19b must be established by clear and convincing evidence. *In re McIntyre*, 192 Mich App 47, 50; 480 NW2d 293 (1991). In this case, while only one statutory basis is necessary, *In re Olive/Metts Minors*, 297 Mich App at 40, the trial court found sufficient evidence to terminate respondent’s parental rights under MCL 712A.19b(3)(c)(i), (g), and (j). Under MCL 712A.19b(3)(c)(i), termination is appropriate where “182 or more days have elapsed since the issuance of an initial dispositional order . . . [and] [t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.” “This statutory ground exists when the conditions that brought the children into foster care continue to exist despite ‘time to make changes and the opportunity to take advantage of a variety of services’ ” *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014), quoting *In re Powers Minors*, 244 Mich App 111, 119; 624 NW2d 472 (2000). Similarly, MCL 712A.19b(3)(g) provides that termination may be ordered where “[t]he parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child’s age.” “A parent’s failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody.” *In re White*, 303 Mich App at 710. Finally, pursuant to MCL 712A.19b(3)(j), the trial court may terminate a respondent’s parental rights where “[t]here is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.” MCL 712A.19b(3)(j). A respondent’s failure to comply with the service plan is likewise evidence that the child would be exposed to harm if returned to the respondent. *In re White*, 303 Mich App at 711.

The conditions leading to adjudication stem from respondent’s heroin overdose in October 2013. Specifically, respondent entered a plea admitting that she drove her daughter to the east side of Detroit to purchase the drugs, injected herself with heroin while she was alone in her home with her daughter, and resided with Gilmore, who, according to respondent, was at a minimum verbally abusive toward her. Respondent admitted at the termination trial that she had struggled with addiction for years preceding the birth of her daughter in 2011, and that she had unsuccessfully attempted rehabilitation at least twice. Evidenced by witnesses testifying on her behalf, it appears that respondent was able to provide her daughter with love, affection, basic needs, and even medical attention for almost two years, despite her continued struggle with addiction and relapse with heroin in March 2013. Respondent’s testimony reveals that her stress became heightened during 2013 because of her daughter’s escalating health problems, the pending criminal proceedings, and tension between her and Gilmore. Those intertwined stressors led to respondent’s heroin overdose in October 2013.

However, respondent did not participate in services at this point in the proceedings. Abbey Ewalt was a case manager for the Key Development Center and was involved with the Family Treatment Court, which offered services to respondent. Although she testified that respondent was initially determined to be in treatment and was a compassionate, attentive mother, respondent failed and missed drug screenings in November 2013. As a result, her daughter was removed from her custody, and respondent's testimony reveals that she suffered substantial guilt. Respondent chose at that point to continue to use drugs (including being arrested and convicted of delivery of a controlled substance) and stopped all services with petitioner. During this time, respondent evaded her caseworker, leading the trial court to direct petitioner to follow the absent-parent protocol in March 2014. That behavior is consistent with the testimony of respondent's long-time friend, Julia Lingo, that respondent would disappear when she started using drugs. The record reveals that respondent did not become serious about her service plan, particularly her sobriety, until she entered the Macomb County Jail in April 2014 and her second involvement with the CPI program in October 2014.

At the time of the termination trial, respondent continued to lack the means to provide proper care. Indeed, when asked that specific question, respondent answered that she would be in a better position when she obtained appropriate housing. However, she urged below and urges on appeal that termination of her parental rights was premature. That is, respondent asserted that there *was* a reasonable expectation that, within a reasonable time, the conditions leading to adjudication would cease to exist and that she would be able to provide proper care to her daughter such that there would no longer be a reasonable likelihood that her daughter would be exposed to harm if returned to her.

In support, respondent offered evidence of her recent progress toward sobriety and her efforts in contacting her caseworkers and support system. Respondent's testimony established that she had engaged in considerable reflection on her addiction, and petitioner did not provide any reason to disbelieve that respondent had been sober since her incarceration in April 2014. Moreover, she had seemingly been proactive in her communications with her caseworkers. However, Ewalt testified that respondent would have to be engaged in services for at least one year to be considered in stable recovery, and respondent testified that she would have to be immersed in her recovery for one year to be successful. There is no doubt that 182 days had elapsed since the initial dispositional order on December 10, 2013. Respondent's history of relapses despite her continued desire and efforts in seeking treatment indicated that her recovery was particularly tenuous and would require significant time and effort. Despite respondent's evidence of increased awareness of her addiction, in 2013, she was unable to maintain sobriety when faced with the stress of her daughter's health issues and her personal relationships, and at that point in time, she had financial help from Gilmore. While her recovery appears to be more stable, her ability to provide basic needs has decreased. In contrast to when she was making efforts to care for her daughter in her first year or so, respondent no longer has transportation, housing, or financial support. She may achieve these material needs for herself again and continue her mental health progress, but it was not clear error for the trial court to conclude that there was not a reasonable expectation that she could make these achievements within a reasonable amount of time, *considering the child's age and needs as a special needs child*. See *In re Williams*, 286 Mich App 253, 272-273; 779 NW2d 286 (2009) (holding that termination was proper under MCL 712A.19b(3)(c)(i) and (g) where the respondent showed "commendable effort to treat her addiction several months before the termination hearing[,] but "she would

require a lengthy period of assessment, counseling, and supervision before reunification with her child could be considered”). In any case, the right of the child to permanency and stability is primary, see *In re Trejo*, 462 Mich at 354, 356, and is particularly implicated in this case where the child requires extensive medical treatments and therapies. See *In re LaFrance Minors*, 306 Mich App 713, 728-729; 858 NW2d 143 (2014) (considering the special needs of a child along with the parent’s conduct underlying the termination proceeding).

Respondent argues that allowing the matter to proceed to trial and terminating her parental rights despite her recent progress was not simply unfair, but cruel, in light of the trial court’s decision to adjourn in November 2014. Although the trial court indicated that respondent’s progress would be reevaluated at that time, the case remained on the track toward a termination trial, which led to some confusion at the November 25, 2014 hearing when respondent requested parenting time. Respondent correctly asserts that she presented proofs of her progress at the November 25, 2014 review hearing, and the record establishes that during the CPI program and after her release from the program, respondent made substantial strides toward compliance with the service plan and the terms of her probation. It does appear that respondent construed the trial court’s decision to adjourn the termination trial in September 2014 as a fresh start such that if respondent did everything asked of her from that point forward, she could move toward reunification. Indeed, in addition to the adjournment in September, Caitlin Knopp, a foster care caseworker at Catholic Services, indicated that she engaged respondent in activities upon her release from the CPI program a month before the trial, which may have led respondent to believe that reunification was still a plausible goal in petitioner’s view.

Despite any unfortunate confusion that may have transpired, for the reasons set forth above, there were grounds to proceed to the termination trial, and based on respondent’s conduct throughout the proceedings, there was clear and convincing evidence establishing statutory grounds to terminate her parental rights. The result of the November 2014 hearing was that respondent was not allowed parenting time after her incarceration based on her progress, but her progress would have been considered by the trial court in deciding whether termination was in the best interests of the child at that time. See *In re Trejo Minors*, 462 Mich at 353 (stating that the trial court may consider all the evidence available to determine the children’s best interests). Accordingly, respondent’s argument, that there was inconsistency between the trial court’s decision to adjourn the termination trial in September 2014 and its decision to proceed to trial in November 2014 despite respondent’s progress, is not grounds for reversing the trial court’s ultimate conclusion that termination of respondent’s parental rights was proper. Respondent has not cited any legal authority to support an argument to the contrary.

Respondent also argues that the order terminating her parental rights should be reversed because Knopp’s testimony was inconsistent and provides evidence that respondent met petitioner’s demands, and petitioner failed to provide adequate services toward reunification. Respondent’s attorney performed an effective cross-examination of Knopp, which highlighted any deficiencies in the testimony and her level of familiarity with the case, given that Knopp had taken over for a prior caseworker who had been assigned to the case. It is the trial court’s role to assess Knopp’s credibility and determine the weight of her testimony. See *In re Miller*, 433 Mich at 337. Further, respondent relies on testimony regarding respondent’s care of the child before petitioner’s involvement and her efforts during the fall of 2014 and early 2015 when she had made her recent attempt at sobriety. Respondent’s argument ignores that she essentially

abandoned the child and ignored her involvement in these proceedings soon after the case was initiated in October 2013 until her incarceration in April 2014.

“Generally, when a child is removed from the parents’ custody, the petitioner is required to make reasonable efforts to rectify the conditions that caused the child’s removal by adopting a service plan.” *In re HRC*, 286 Mich App 444, 462; 781 NW2d 105 (2009) (citation omitted). The record established that when the goal remained reunification, it was respondent who abandoned services, not that petitioner failed to offer reasonable services. See *In re Frey*, 297 Mich App at 248 (stating that “there exists a commensurate responsibility on the part of respondents to participate in the services that are offered”). Respondent’s complaint, however, is that Knopp did not visit her in jail and provide adequate services during her incarceration in 2014. Petitioner requested that the goal be changed to termination and adoption during the May 27, 2014 review hearing, and a supplemental petition was filed to that effect in June 2014. Respondent’s argument lacks merit because when termination of parental rights is the agency’s goal, reunification efforts are not required. *In re HRC*, 286 Mich App at 463. Moreover, it does not appear that respondent ever requested increased services, and “[t]he time for asserting the need for accommodation in services is when the court adopts a service plan, not at the time of a dispositional hearing to terminate parental rights,” *In re Terry*, 240 Mich App 14, 27; 610 NW2d 563 (2000).¹

If the trial court determines that clear and convincing evidence supports a statutory basis for the termination of parental rights, “it shall order termination of parental rights if it finds ‘that termination of parental rights is in the child’s best interests[.]’ ” *In re Jones*, 286 Mich App 126, 129; 777 NW2d 728 (2009), quoting MCL 712A.19b(5). Termination of a respondent’s parental

¹ The only case cited by respondent within the analysis section of her brief on appeal is *In re Newman*, 189 Mich App 61; 472 NW2d 38 (1991). Respondent contends that *In re Newman* supports her argument that the caseworker was the person in the best position to provide her with help and services, but because she failed to do so, terminating respondent’s parental rights was premature. *Newman* is distinguishable. The *Newman* Court held that the respondents’ parental rights were prematurely terminated because one of the conditions leading to adjudication was the failure to maintain a clean home, and the “homemaker” assigned to help the family simply stopped going to the home. *Id.* at 65-66. The Court reasoned, “How then can we say there is no reasonable likelihood that the conditions in the home would not be rectified within a reasonable time when the one person who could have helped respondents remedy the conditions refused to do so?” *Id.* at 66. The petitioner also contended that the parents could not control their children, but one child at issue had a particularly challenging behavior that even professionals could not control. *Id.* at 68. The Court explained that the respondents should have been given a chance to demonstrate their parenting skills relating to the other children without having to accommodate the more challenging child. *Id.* These are not the circumstances in this case, which involves respondent’s ability to remain sober in order to properly parent one special needs child. Another distinguishing aspect of *Newman* is that the respondent mother had a limited intellectual capacity and required more instruction. *Id.* at 66.

rights must be supported by a preponderance of the evidence on the whole record. *In re White*, 303 Mich App at 713. The trial court

should consider a wide variety of factors that may include the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home. The trial court may also consider a parent's history of domestic violence, the parent's compliance with his or her case service plan, the parent's visitation history with the child, the children's well-being while in care, and the possibility of adoption. [*Id.* at 713-714 (footnotes containing citations and quotation marks omitted).

In support of her argument, respondent summarizes the testimony of several witnesses who observed that respondent was attentive to her child and that she and her child shared a bond. However, these observations generally relate to the witnesses' recollection of respondent's behaviors while she was sober and much of the testimony in this regard predates these proceedings. After her child was removed from her care in November 2013, it appears that respondent visited her child in the hospital a few times in January through March in 2014, but her visitation was slight even before her incarceration in April 2014. Respondent testified that she and her child spent about an hour and a half together before the November 25, 2014 hearing, which seems to be the last time the two saw each other.

At the time of the termination trial, the child was three years old and had been cared for by the foster parents since she was a month shy of two years old. Even if a strong parent-child bond remained intact, the foster parents' ability to care for her special needs outweighed the preservation of respondent's parental rights. See *In re Trejo*, 462 Mich at 356 (the "primary beneficiary" of the best-interests determination "is intended to be the child"). The trial court explained that the child had been making good progress with the foster parents, and one of the two families who had been providing care was willing to adopt. In contrast, respondent essentially ignored the terms and conditions of the service plan when this case was initiated and only in the last months of her jail sentence made efforts to optimize her ability to provide for even the basic needs of her child. To that end, she admitted that she was still not able to provide for those needs, such as housing, and while she was commendably committed to her recovery, those efforts combined with her need to potentially work two jobs would consume a great deal of her time. For these reasons, the trial court did not clearly err in concluding that a preponderance of the evidence supported the determination that terminating respondent's parental rights was in the child's best interest because the child required permanency and stability, which were needs that could not wait for respondent's potential rehabilitation.²

² We recognize respondent's efforts and substantial progress in addressing her addiction and towards returning to a stable life which, if continued, will allow her to maintain a family in the future. However, the decision before us in this case is whether, as to this child, the trial court properly found statutory grounds for termination and properly found that termination is in this child's best interests.

Affirmed.

/s/ Douglas B. Shapiro

/s/ Peter D. O'Connell

/s/ Kurtis T. Wilder